Supreme Court, U.S.
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No. 06-1224

IN THE

Supreme Court of the United States

VINOD DUMAR DAHIYA,

Petitioner,

v.

TALMIDGE INTERNATIONAL, LTD. and
NEPTUNE SHIPMANAGEMENT SERVICES (Pte),

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF LOUISIANA,
FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether, particularly in light of the strong federal policy favoring arbitration, compelling reasons exist to review the Louisiana state court judgment ordering the arbitration of a claim brought by a foreign seaman against his foreign employer for an incident occurring on the high seas on a foreign flag vessel.

II. Whether the original of the arbitration agreement is physically required simply to obtain a judicial order compelling arbitration as opposed to an order confirming an arbitration award; and whether, in any case, the technical requirements of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards have been either satisfied or waived.

III. Whether the alleged misinterpretation of the scope of the arbitration agreement by the Louisiana courts presents a compelling reason for review by this Court in light of the strong federal policy in favor of arbitration.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

The ultimate parent of respondent Talmidge International, Ltd. is AET Tanker Holdings Sdn. The ultimate parent of respondent Neptune Shipmanagement Services (Pte) is AET Tanker Holdings Sdn. No publicly traded company owns more than 10% of the stock of either respondent.

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Statutes:

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 *et seq.* 1, 4

9 U.S.C. § 206 5

Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* 1

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STATEMENT OF THE CASE

This maritime claim is brought by a seaman and citizen of India against various foreign corporate entities for an injury occurring on the high seas aboard a foreign flag vessel, the M/T EAGLE AUSTIN. The defendants included the respondents — Talmidge International as the owner of the vessel and Neptune Shipmanagement, petitioner's employer.

The contract of employment pursuant to which petitioner was serving aboard the vessel called for arbitration of "any dispute" arising out of his service on the ship. It is not contested in this Court that petitioner's personal injury claim falls within the meaning of "any dispute" as the term is used in the arbitration provision.

The arbitration is to take place in petitioner's home country, India, or Singapore before a local arbitrator.

Notwithstanding the arbitration requirement, petitioner filed suit in Louisiana state court, asserting claims of negligence and vessel unseaworthiness under the Jones Act and the general maritime law. Pursuant to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[1] respondents removed the case to the United States District Court for the Eastern District of Louisiana. The district court granted the petitioner's motion to remand and denied defendants/respondents' motion to stay pending arbitration. The subsequent proceedings in the federal courts are not relevant at this time because ultimately the appeal of

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[1] The Convention is codified at 9 U.S.C. § 201 *et seq.* The Convention incorporates the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*

the motion to remand was dismissed by the court of appeals for lack of appellate jurisdiction.

The case was then tried on the merits to the Louisiana state district court and resulted in a judgment in favor of petitioner and against two of the several defendants, respondents Talmidge International and Neptune Shipmanagement.[2] Before trial, the state district court denied respondents' motion to dismiss or to stay pending arbitration, finding that the terms of a Louisiana statute nullifying forum selection clauses in contracts of employment took precedence over the Convention.[3]

Respondents appealed the adverse trial judgment to the Louisiana Court of Appeal for the Fourth Circuit, arguing, *inter alia*, that by virtue of the Supremacy Clause federal law as embodied in the Convention, a treaty of the United States and as such the "highest law of the land", took precedence over contrary state law. In opposing respondents' appeal to the Louisiana Fourth Circuit, petitioner raised the same technical objections to arbitration asserted in the writ application pending before this Court.

The Louisiana Fourth Circuit Court of Appeals reversed the district court on the Supremacy Clause question, but did not in its written opinion address the separate technical issues upon which petitioners relied alternatively and on which this petition is exclusively based. Arguing that the Louisiana

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[2] No judgment was entered against the other defendants who are therefore not now before the Court.

[3] The Louisiana statue is found at Louisiana Revised Statutes 23:921 (A)(2).

Court of Appeals had not addressed these technical defenses to arbitration, petitioner requested a rehearing on those limited issues. This request was denied.

Petitioner next sought consideration and review of these technical defenses to arbitration by the Supreme Court of Louisiana, but petitioner's application for a writ of certiorari in that court was also denied.

SUMMARY OF THE ARGUMENT

Petitioner's assertion that the technical issues on which this petition for a writ of certiorari is based have not been considered by any lower court does not fairly state the facts. While it is true that neither appellate court in Louisiana chose to address these technical issues in a written decision, the issues were pointedly raised by petitioner, twice to the court of appeals and once to the state supreme court.[4] There is no basis to infer from the failure of either court to address the issues expressly that the issues were not considered. To the contrary, the presumption must be that the courts did not consider the issues to be sufficiently substantive so as to require written comment.

In any case, petitioner mistakenly relies upon Article IV of the Convention in support of his contention that the original of the arbitration agreement must be presented in order to support an order compelling arbitration. Article IV pertains only to actions to confirm an arbitration award. Article II of the Convention is the pertinent provision and requires only evidence of a written agreement.

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[4] See footnote 4 at page 7 of petitioner's writ petition.

Petitioner's claim that one of the respondents was not a party to the arbitration agreement overlooks the interdependent nature of petitioner's claims, a factor that the federal courts have acknowledged as determinative of the scope of a given arbitration agreement. Federal law requires, in any case, that doubts about the scope of arbitration be resolved in favor of arbitration.

The Constitutional question resolved by the Louisiana courts is not now at issue. Otherwise, there is no compelling reason to consider that this case involves important federal questions or has anything more than an isolated significance for the individual parties involved in this particular litigation.

The petition for writ of certiorari should therefore be denied, leaving petitioner the right to arbitrate his claim in his native country before a local arbitrator.

REASONS FOR DENYING THE PETITION

Petitioner's first contention is that Article IV of the Convention requires submission of the original or a certified copy of the original arbitration agreement as a prerequisite to obtaining a judicial order compelling arbitration.[5] Petitioner has, however, confused the Article IV requirements for obtaining the recognition and enforcement of a foreign arbitral *award* with the Article II requirements for obtaining an order that a particular dispute be referred to arbitration.[6]

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[5] The Convention is reproduced beginning at page 27 a of Appendix A of the petition for a writ of certiorari and in the materials following 9 U.S.C. § 201.

[6] This distinction is in fact recognized by one of the cases on which petitioner relies, namely *Czarina, LLC v. WF Poe Syndicate*, 358 F.3d 1286 at 1291 (11th Cir. 2004).

There is no requirement of an original agreement, only of an agreement in writing, in order to obtain an order compelling arbitration.[7] Since this case does not involve a question of the enforcement of an arbitration award, petitioner's complaint regarding the failure of the original agreement to be introduced into the trial record is irrelevant.

Respondents would emphasize in any case that there is no question about the authenticity of the arbitration agreement entered into the trial court record or that petitioner knowingly signed it. This distinguishes the case from the Third Circuit decision relied upon by petitioner, *China Minmetals Materials Import and Export Co. Ltd. v. CHI MEI Corporation,*[8] in which there was an allegation of forgery.

In sum, petitioner's contention that the original of the arbitration agreement is required in order to obtain an order compelling arbitration is based on the wrong Convention article. There is no contrary precedent from any court and certainly no basis to claim there is a conflict among the circuits or an important federal question which this Court should review.

Any objection to submission of a photocopy of the employment contract in lieu of the original was in any case waived by petitioner when petitioner himself submitted a photocopy of the agreement at trial as an exhibit in support of his claim for damages. Finally, as a matter of Louisiana evidence law, the submission of a photocopy of an exhibit

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[7] See Article II of the Convention as well as 9 U.S.C. § 206.

[8] 334 F.3d 274 (3rd Cir. 2003).

carries the same weight as the original in the absence of a genuine question about the authenticity of the copy.[9]

Petitioner's second contention is equally lacking in legal significance and also has been fully litigated in the Louisiana state courts. Petitioner asserts that his contract of employment was only with respondent Neptune Shipmanagement and that the contract's arbitration clause should not extend to Talmidge International even though it was the owner of the vessel on which petitioner was employed by Neptune. Similar arguments have been regularly rejected by other courts because, as here, the underlying claims are inextricably interrelated. As one federal court put it:

> . . . arbitration is appropriate both where the signatory plaintiff relies on the terms of a written agreement with an arbitration clause in its claim against a non-signatory defendant and where that signatory plaintiff raises allegations of substantially interdependent and concerted misconduct by both the signatory and non-signatory defendants.[10]

It is difficult to imagine allegations of a more interrelated nature than those petitioner made in this case – that Neptune

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[9] See Louisiana Code of Evidence, Article 1003.

[10] *Vigil v. Sears National Bank*, 205 F.Supp.2d 566, 568-69 (E.D.LA. 2002). Also see *Williams & Assoc. v. McMahon*, 697 F.Supp 488 (N.D.GA. 1988) ("[I] would be 'manifestly inequitable to permit [plaintiff] to argue that the non-signatory was liable for its failure to perform the contractual duties described in the agreement and at the same time argue that the non-signatory could not invoke the arbitration clause.")

as his employer was negligent and that the Talmidge-owned vessel on which he was employed by Neptune was unseaworthy, both contributing to the single incident which allegedly caused his injury. Petitioner would not have been on the Talmidge vessel in the first place if he had not entered into an employment contract with Neptune, so obviously all of the claims Dahiya asserts for the single accident in which he was involved are necessarily and inextricably interconnected. Petitioner's contractual agreement to submit to arbitration "any dispute" arising out of his employment contract reasonably includes not only claims against his employer but also those against the owner of the vessel on which he served, as the courts below implicitly recognized. This is consistent with the widely recognized federal rule that doubts about the scope of arbitration must be resolved in favor of arbitration.[11]

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[11] See, for example, *United Steelworkers of America v. Cooper Tire & Rubber Co.*, 474 F.3d 271 (6th Cir. 2007).

CONCLUSION

Petitioner's arguments in this Court are of a purely technical nature and in any case have been duly presented to the Louisiana courts on at least three occasions. Based on the clear requirements of the Convention and of United States law, and against the backdrop that arbitration is to be favored in the law, the courts below have properly directed petitioner to arbitrate his claim pursuant to the requirements of his employment contract. His petition should be denied.

Respectfully submitted,

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